

UNITED STATES COURT OF APPEALS  
Filed 1/24/97  
FOR THE TENTH CIRCUIT

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DAVID P. COULTER,

Plaintiff-Appellant,

v.

HERBERT R. TILLERY,  
Commandant, USDB Ft. Leavenworth;  
JOHN DOES, John and Jane Does  
1-100 are correctional employees,  
USDB Ft. Leavenworth,

Defendants-Appellees.

No. 96-3282  
(D.C. No. 96-3308-GTV)  
(D. Kan.)

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ORDER AND JUDGMENT\*

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Before TACHA, EBEL and KELLY, Circuit Judges.

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Plaintiff-appellant David P. Coulter appeals from the district court's denial of his motion for injunction, filed in connection with his civil rights case before

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

that court.<sup>1</sup> He also filed a motion for injunction with this court seeking the same relief, namely that the prison provide a nutritious lacto-ovo vegetarian diet and allow him to use disposable plates and utensils, so that he can maintain his long-held religious beliefs and practices.

Following appellees' request for an extension of time to complete briefing ordered by this court on the motion for injunction, we granted the request contingent upon appellees providing disposable plates and utensils to appellant until such time as this court rules on the motion for injunction. Appellees filed their brief on January 9, 1997. Therein, they represent that "defendants are providing, and will continue to provide, the eating utensils [appellant] requests. Defendants also are willing to provide, and always have provided, a lacto-ovo vegetarian diet that meets all standard nutritional requirements." Response at 1.

Appellees suggest that the appeal may be moot. We agree that, in light of appellees' willingness to provide appellant disposable plates and utensils, both the motion for injunction and appellant's interlocutory appeal are moot.<sup>2</sup>

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<sup>1</sup> On October 28, 1996, the district court granted appellant provisional leave to proceed in this interlocutory appeal without prepayment of costs or fees. Accordingly, we need not rule on his separate motion before this court to proceed in forma pauperis.

<sup>2</sup> Although appellant listed an adequate vegetarian diet in his prayer for relief in his complaint before the district court and his pleadings before this court, he included no specific allegations, separate and apart from his arguments about the lack of disposable plates and utensils, as to why the prison vegetarian diet was not  
(continued...)

This interlocutory appeal, together with appellant's motion for injunction, is DISMISSED as moot. Any outstanding motions are DENIED.

ENTERED FOR THE COURT  
PER CURIAM

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<sup>2</sup>(...continued)

adequate. Further, the documents evidencing his exhaustion of administrative remedies reference only his complaints that the prison stopped allowing his use of paper plates, Styrofoam cups, and disposable utensils. He has presented no evidence that he complained to prison officials about any inadequacy in the vegetarian diet itself. Therefore, the single issue preserved for review here is appellant's claim regarding the appellees' denial of his request to use disposable plates and utensils.